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COMMITTEE ON THE RIGHTS OF THE CHILD

Eighth session

SUMMARY RECORD OF THE 205th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 24 January 1995, at 3 p.m.

Chairperson: Mrs. BADRAN

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GE.95-15254 (E)

The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (agenda item 4) (continued)

United Kingdom of Great Britain and Northern Ireland (continued)
(CRC/C/11/Add.1; CRC/C.8/WP.1)

1. The CHAIRPERSON invited the United Kingdom delegation to respond to the remaining questions put at the previous meeting.

2. Mr. LUCE (United Kingdom) said that the Committee's comments on the position of children during the state of emergency in Northern Ireland had been noted. The Committee was right to observe that such situations were very problematic. As stated at the previous meeting, procedures were in place to contain the risk of unjustified treatment of the civilian population of Northern Ireland. The security forces had never been exempt from the criminal or civil law, and a number of their members had been convicted by the courts. The points made about harassment had been noted. After four and a half months of cease-fire the Government's primary objective was to take the process forward. The United Kingdom delegation would therefore be reluctant to engage in a dialogue with the Committee that could be interpreted as preparation for a reversion to the state of emergency.

3. With regard to the question put by Mrs. Eufemio, in 1994 the Central Statistical Office had produced a general study of the large volume of statistics on children in order to stimulate public debate about the position of children and their changing role in society. All the major public services were monitored by the responsible government departments, which published regular statistics on children's education, justice, health and social services and on some private-law matters such as adoption. As a result of the big changes stemming from the new policies for children, there would be some discontinuities in statistical trends. For example, the 1989 Children Act had altered the categories of children in care and the legal categories of the public-care system. However, in five years time, when the United Kingdom would be submitting its next report, the trends should be firmly established and it should be possible to make informed judgements about the progress achieved. Under the Children Act, periodic reports were submitted to Parliament, and an annual report was prepared by the independent Chief Inspector of Social Services.

4. The question by Mrs. Santos País on the role of Parliament in implementing the Convention had been answered to some extent at the previous meeting and in the United Kingdom report (CRC/C/11/Add.1), which described the legislation on children which had been passed or was programmed. It was fair to say that over the past five years and the next two to three years Parliament would have spent more time on children's matters than it had for many decades. Questions of the rights of parents and the rights and interests of children were explicitly and frequently debated.

5. He could confirm that the United Kingdom had arranged extensive publicity and information activities in connection with the Convention. Since the Convention had been ratified shortly after the passage of the Children Act, it was hard to separate the publicity given to the two instruments. Several

thousand copies of a pamphlet aimed at children had been circulated. Other publications intended for adults and professional groups had been produced. Under the Children Act and other new legislation, the United Kingdom encouraged many training programmes, and funded them to a considerable extent, and had done everything it could to ensure that members of the main caring professions were trained in the provisions of the Act and the Convention.

6. Mrs. SARDENBERG asked whether the United Kingdom Government intended to involve non-governmental organization (NGOs) in the implementation of its recommendations affecting children. She was grateful for the promise given at the previous meeting of further information about the territories administered by the United Kingdom, especially Hong Kong.

7. Mr. LUCE (United Kingdom) said that information would indeed be requested from the Hong Kong Government. NGOs would be involved in the implementation of all significant policy changes and in the follow-up, where necessary, to the Committee's observations. NGOs had always been able to make their views known on all issues.

8. Miss MASON asked why it was necessary to have three different pieces of legislation on children living in different parts of the United Kingdom. For example, although the Children Act had been passed in 1989, separate legislation had been enacted five years later for Scotland and Northern Ireland. She was also puzzled by the phrase "when there is sufficient parliamentary time" used, for example, in paragraph 23 of the report. Did it imply a less than total commitment to children by the United Kingdom? She would also like further information about the rights of the fathers of children born out of wedlock and whether the Family Law Reform Act would incorporate the rights of children in the whole of the United Kingdom.

9. Mr. LUCE (United Kingdom) said that it was necessary to legislate separately for England and Wales, Scotland, and Northern Ireland mainly because of the significant differences in the structure of the children's services and the basis of legal administration. The approach to legislation on children was consistent with the way in which legislative matters were dealt with in the United Kingdom. The phrase cited by Miss Mason implied that the Government had made a commitment to introduce legislation but that the legislation had not yet been included in the parts of the legislative programme formally announced for a parliamentary session. Such legislation would be dealt with in subsequent sessions. The present session of Parliament was already considering three substantive pieces of legislation concerning children. Some of the legal disadvantages of birth out of wedlock had been removed by the legislation enacted in 1986. He would seek further details about the rights of fathers of children born out of wedlock.

10. Miss MASON said the point of her first question had really been to establish whether the three-part legislative procedure meant that children living in some parts of the United Kingdom suffered discrimination. Why could the legislation for different parts of the United Kingdom not be enacted all at the same time? Were the disparities among children living in the three regions so great that they could not be dealt with simultaneously.

11. Mr. CAMPBELL (United Kingdom) said the problem was that Scottish law was different in many respects from the law of England and Wales, so that the situation in Scotland required separate legislation. There was certainly no discrimination against Scottish children.

12. The CHAIRPERSON invited the Committee to take up the section of the list of issues (CRC/C.8/WP.1) entitled "General principles", which read:

"General Principles

Non-discrimination

(Art. 2)

12. What strategies have been developed or are envisaged to address problems facing children from minority ethnic communities especially in relation to their over-representation in public care situations, cases of school exclusion and living in poverty?

13. Please indicate to what extent the provisions of article 2 of the Convention, concerning non-discrimination, are covered in national legislation, in particular with regard to the State party respecting and ensuring the rights set forth in the Convention, irrespective of the child's or his or her parent's or legal guardian's social origin, property, disability, birth and other status.

14. Are there any plans to introduce legislation to eliminate racism and racial discrimination in Northern Ireland?

Best interests of the child

(Art. 3)

15. Paragraph 98 of the report indicates that in some of the areas which affect the life of a child very significantly, such as health and education, there is an implicit acceptance of the principle of the best interests of the child, although there is no reference to it as such in the relevant legislation. Does the Government intend to amend the law in order to take account of the best interests of the child in all the areas affecting him or her and for all parts of the United Kingdom?

Right to life, survival and development

(Art. 6)

16. What measures are planned to address the problem of social class and regional differentials in the incidence of infant mortality?

Respect for the views of the child

(Art. 12)

17. What measures are being taken in the education system to implement article 12 of the Convention both in respect of the child's right to participate in decisions that individually affect him or her, and also in respect of the right to participate in the development of school policy and administration? What information is available to children to ensure that they are able to exercise their right to complain (para. 137 of the report)? What measures are being taken to ensure that affected children have the right to be heard in all administrative procedures within the education system - e.g. school choice and school exclusion appeals and special education assessment and appeals?"

13. Mrs. SANTOS PAIS said that the United Kingdom clearly recognized the importance the Committee attached to the first part of the Convention and was committed to bringing its national legislation into line with the Convention. The United Kingdom was also making children's issues a political priority and was conveying the message that the situation of children must be improved. Perhaps that political commitment could be further expressed by incorporating the Convention in national law. Promoting the Convention and providing appropriate training in its provisions were in fact ongoing processes which should never end. A continual effort was required in order to change people's attitudes to children. She was encouraged by the progress made in the United Kingdom. The decision to implement the Convention in conjunction with the Children Act was welcome, for the main purpose of the reporting procedure was to reinforce the national capacity to guarantee that children could exercise their rights.

14. Like Mrs. Sardenberg, she was very interested in the Hong Kong situation. Now was the right time to try to ensure that fundamental freedoms and human rights would be guaranteed in Hong Kong after the change of administration.

15. Mr. HAMMARBERG said that he agreed with Mrs. Santos País about the importance of training. The rights of the child must be systematically incorporated in training programmes for professionals, including the police. Attention should also be given to further training, for the implementation of the Convention was so much a question of changing people's attitudes.

16. With regard to the situation in Northern Ireland, the Committee did not want its position to be misinterpreted either. Its concern was to ensure that the emergency and other legislation was child-friendly. For example, it was very important for a child detained by the security forces to be allowed to contact his or her parents immediately and obtain legal advice. Any period of isolation in police or military hands might be prejudicial to the child's mental health. Questions had arisen about the treatment of children in such situations. He would like to know what the United Kingdom could do to improve matters.

17. There was nothing in the Convention that required a country to establish a special commission in fulfilling its obligation to implement the Convention. The point he had made at the previous meeting was concerned rather with questions of race relations and gender equality. Perhaps the United Kingdom needed an extra mechanism to carry out Parliament's intentions by monitoring trends in those areas. One specific improvement would be to introduce a complaints procedure at the local level. Despite the arguments set forth in the written reply on issue No. 14, he could not understand why the Race Relations Act did not apply in Northern Ireland.

18. Mr. CONLIFFE (United Kingdom) said that additional safeguards had been introduced for the rare cases in which children aged 10 to 17 needed to be interviewed by the security forces: children were not placed in cells and their parents were usually present. The cessation of hostilities in Northern Ireland had been welcomed in all quarters and the Government was committed to reviewing the emergency legislation as the situation improved further.

19. The question of racial discrimination in Northern Ireland was really one of priorities. Much had been done to establish equal opportunities between the communities and between women and men. Consultations were being held to consider the needs of ethnic groups and "travellers". He was optimistic about their outcome.

20. Mrs. EUFEMIO said that the Committee's reporting guidelines (CRC/C/5) specifically requested information about difficulties encountered in implementing the terms of the Convention. What was the United Kingdom doing to harmonize the legislative systems of Northern Ireland, Scotland, England and Wales? It would also be useful if the delegation addressed all subsequent questions concerning legislative measures from that standpoint.

21. Mr. LUCE (United Kingdom) said that the Government was doing its utmost to improve its legislative framework for children. In fact, a number of legislative measures currently under consideration in Scotland and Northern Ireland did not fall under the United Kingdom's obligation under the Convention. Furthermore, Parliament's legislative programmes in recent years demonstrated the high priority that the Government attached to the needs and rights of children. The United Kingdom must, however, interpret and implement the principles of the Convention in accordance with its own legislative and constitutional procedures, as the provisions of that instrument fully recognized.

22. Mr. KOLOVSOV inquired whether studies had been conducted on the incidence of suicide among young people.

23. Mrs. SANTOS PAIS said that the United Kingdom's report and written replies conveyed the impression that, while discrimination was generally unlawful, it was not specifically prohibited. Article 2, paragraph 1, of the Convention did not set out a comprehensive list of the kinds of discrimination, but it did include discrimination on the ground of disability, on which there appeared to be no ban in the United Kingdom. The delegation

should provide clarification on the ways in which article 2 was reflected in national legislation and, in particular, whether all the categories of discrimination were covered.

24. Again, the case of a child born out of wedlock to a British father who was denied his father's nationality might in fact contravene the provisions of article 2, which prohibited discrimination on the basis of the child's birth or the status of his parents. Did that child have the right to bring his case before the court? What remedies were available to him? A description of the measures undertaken by the United Kingdom to implement the terms of article 2, paragraph 2 would also be welcome.

25. The report further gave the idea that the term "best interests" was seen as synonymous with "welfare". While they were related concepts, the notion of "best interests" as set out in the Convention posited the child's welfare as the primary consideration. Furthermore, the written reply to issue No. 15 stated that the principle of the best interests of the child was implicitly accepted. But if those interests were not respected, what remedies existed to guarantee them?

26. The report to Parliament by the Secretary of State for Health on the implementation of the Children Act had revealed that it was not the general practice of teaching staff to elicit or record the views of children and that the skills and experience of staff working with disabled children were widely disparate. Generally speaking, one gathered that the United Kingdom had no tradition of listening to the views of children. Furthermore, paragraph 151 of the State party's report said that parents could, for example, change a child's name but there was no indication that the child had the right to oppose such a decision. How was the principle of respect for the views of children implemented in the United Kingdom?

27. Mr. HAMMARBERG commended the efforts of the United Kingdom to enact legislation concerning race relations in Northern Ireland. And yet, why did no such laws already exist? A number of small minorities lived in that country. Two Belfast travellers camps that he had recently visited were in an appalling state, with no running water, no sanitation facilities, and faulty electricity. Moreover, the people living on non-official sites were worried about eviction. Measures must be taken to make sure that the basic rights to health care, health protection and schooling of the children concerned were on par with those of all other children living in the United Kingdom.

28. The general tone of the written reply to issue No. 17 suggested that consulting the child on his views was seen as a matter of discretion rather than a right. The terms of article 12, paragraph 1, however, clearly set out the child's right to express his views in matters affecting his own life.

29. Miss MASON said she had asked about the parental rights of unmarried fathers and the United Kingdom simply replied that the Children Act 1989 had resolved that problem. Further clarification would be useful. Paragraph 203 of the report stated that unmarried fathers had no parental responsibility but could acquire it by court order or with the mother's agreement. Furthermore, legislation on parental responsibility differed in Scotland, in Northern Ireland, and in England and Wales. In Scotland, for example,

Northern Ireland, and in England and Wales. In Scotland, for example, unmarried fathers were automatically denied parental rights. It would be helpful to know how the United Kingdom reconciled that discrepancy with the principle of non-discrimination and with the terms of article 18, paragraph 1, which stipulated that States parties should ensure recognition of the principle that both parents had common responsibilities for the upbringing and development of the child.

30. Mrs. SARDENBERG asked for more information on the status of disabled children, particularly their access to health services.

31. Mr. LUCE (United Kingdom) said that studies on the incidence of suicide among young people had been conducted and the relevant information would be forwarded to the Committee as would detailed information of discrimination against persons with disabilities.

32. Some fundamental questions had been raised concerning the best interests of the child and the way that principle was reflected in the law. After the Children Act 1989, substantial training programmes have been carried out for members of the legal profession, doctors, social workers and others concerned with the rights and needs of children, with a view to developing a multidisciplinary focus for child protection services. Work in that area had begun in the mid-1980s with the publication of a document entitled "Working Together", aimed at public services responsible for preventing abuse of children and for dealing with suspected abuse when cases arose, including the social services, the medical profession, health-care workers, and the police. It had been re-issued at roughly the same time as the implementation of the Children Act and the ratification of the Convention. Furthermore, a regulatory council, the Central Council for Education and Training in Social Work, had the task of setting training objectives in the social services and authorizing curricula and courses. It had incorporated in the curricula of the professions concerned with children, such issues as the best interests of the child, children's rights and the responsibility of parents vis-à-vis those rights.

33. Significant developments in legislation to protect ethnic minorities in Northern Ireland were indeed likely. Measures of that kind had not been enacted sooner simply because other matters of greater urgency had commanded priority in recent years.

34. Mr. HARRINGTON (United Kingdom) said that the case cited by Mrs. Santos País in the context of her discussion of article 2, directly addressed the question of how the United Kingdom's reservations worked. Although the structure of the law made it necessary to continue to apply those reservations, the practice was to minimize their adverse effects. In the example she had mentioned, if the child would have acquired citizenship but for the lack of a certificate of marriage of the parents, the Home Secretary would as a matter of course use his discretionary powers under the British Nationality Act to register the child as British. If the Home Secretary refused to use his discretion in that way, no formal recourse was open to the child. In practice, however, no such remedy would be necessary. There were of course certain limitations: that the child should be a resident of the United Kingdom, and that evidence of paternity could be shown.

35. Mr. CAMPBELL (United Kingdom) said that the passage of the Scotland Children Bill would place Scotland in a situation similar to that of England and Wales with regard to the paternity rights of unmarried fathers. The proposed legislation would in fact provide for the father to acquire those rights by registered agreement with the mother. The Scottish Law Commission had considered granting automatic rights to the fathers of children born out of wedlock and had ultimately decided to develop a procedure for the acquisition of parental rights. It had felt that in, for example, the rare case of a child born of rape, the rights of the mother and child should prevail.

36. Mr. LUCE (United Kingdom) said that, after much thought and many consultations, it had been agreed that granting parental rights to fathers in such cases could put the interests of mother or child at risk. It was important to note that the implementation of the Convention called for a careful balancing of the interests of the various parties. The United Kingdom had opted for a solution that accorded the court an active role in adjudicating the best interests of all parties, especially the child.

37. Mr. PHIPPS (United Kingdom) said the Government had determined that any attempt to draft a single piece of legislation covering all the categories of discrimination cited in article 2 would prove far too unwieldy. It had therefore started by tackling the most urgent forms. The first two legislative measures had concerned racial discrimination. An Act prohibiting discrimination on the grounds of gender had then been adopted, making use of similar provisions and machinery. In addition, the United Kingdom had in recent years twice enacted legislation providing for educational measures for children with mental or physical disabilities; the forthcoming Disability Bill, supplementing the existing legislation, would emphasize access to services. The United Kingdom had consistently applied to the drafting of new legislation the practical experience it had gained in the implementation of anti-discrimination legislation.

38. The qualifications made in paragraph 1 of article 12 of the Convention were particularly relevant to the question of how the United Kingdom was striving to give effect to the general principles enshrined in the instrument. Basically there were three ways: through provisions of statute law; by referring to the relevant parts of existing common or general law, or rules of natural justice; and by providing guidance on good practice where introduction of legislation was not deemed practicable. For instance, two Acts of Parliament in recent years related to the special educational needs of children. The purpose of the most recent Act, passed in 1993, was to identify children with special needs and recommend action to meet those needs. The statute law was underpinned by a very detailed code of practice for all persons and authorities dealing with such children. The code had the force of law and compliance with it could be monitored.

39. A combination of rules of natural justice and guidance on good practice had been the preferred option in decisions relating to the exclusion or expulsion of children from schools. In accordance with the rules of natural justice, the child's viewpoint must be heard before any decision could be taken. Furthermore, relevant guidance had been issued to all schools and local authorities on the practical implementation of those rules.

40. Lastly, regarding pupil participation in school management, the Government had decided that it would not be practicable to pass legislation requiring schools to set up councils or other bodies for that purpose, in view of the considerable differences in terms of age range and the size and local environment of schools in the United Kingdom. Instead, guidance on good practice had recommended that the governing bodies of schools should consider allowing older pupils, in particular, to have some say in decisions on the internal organization of their schools. It was the responsibility of each school or governing body to choose the most suitable method for pupil participation.

41. Mr. CONLIFFE (United Kingdom) said he was sympathetic to the situation of travellers, having paid a visit to one of their sites very recently. How to deal with the travellers and their needs was a long-standing problem in Northern Ireland and the island as a whole. For although they must have access to education and social services, it was often difficult to make adequate provision on account of their lifestyle. As indicated in the written replies, the number of sites available with basic amenities had been increased in recent years and it was hoped that further improvements would be made by 1996.

42. Mr. HAMMARBERG said that the opportunities for children to have a say in the running of their schools seemed to differ in the various parts of the United Kingdom and he sought clarification in that regard. A comparative study of the different regulations in force throughout the country might be used as a basis for possible reforms. He would like to know whether schools were obliged to have some type of complaints mechanism. Furthermore, was the delegation satisfied that British schoolchildren were fully aware of their rights to participate in the running of their schools and to avail themselves of complaints mechanisms, where they existed?

43. It was his impression that the plans for further sites for travellers would still not meet their requirements. Moreover, rather than improving their situation, recent amendments to legislation had conferred greater powers on the local authorities with regard to eviction and more punitive measures could now be taken against travellers living on illegal sites. If that was so, it was not the right approach.

44. Mrs. SANTOS PAIS, referring to paragraph 151 of the report (CRC/C/11/Add.1), drew attention to a further example of discrimination in the treatment of children: the name they were given depended on the marital status of their parents. In her view, a right could only be recognized as such when accompanied by appropriate protection and implementation measures. It was difficult to claim that there was adequate protection against discrimination on the basis of fragmented legislation. She concurred with the United Kingdom delegation that legislation was not the only answer, but wished to highlight the crucial preventive role it played, particularly with regard to discrimination. While she would not deny the importance of protecting against racial and sexual discrimination, given the current economic recession in Europe why should non-discrimination on the basis of property, which was also mentioned in article 2 of the Convention, not be considered a priority?

45. The best interests of the child - one of the basic principles of the Convention - should be reflected in all national legislation, not only the Children Act, and more important, it must be upheld by all State institutions. As to respect for the views of the child, the delegation claimed that although no specific legislation existed, appropriate guidance was provided to schools. However, she was concerned that the participation of children in school affairs was left to the discretion of headmasters or governing bodies. Admittedly, the maturity of children was an important factor, but even younger children were entitled to express an opinion, for instance on playground facilities. Children must be involved in running their schools above all because it was something that strengthened democracy and was good preparation for their participation in society. The fact that the Convention mentioned respect for the views of the child in two articles, articles 12 and 13, warranted further reflection on the issue by the United Kingdom delegation.

46. The CHAIRPERSON further questioned the point made by the United Kingdom delegation regarding the qualification in article 12, paragraph 1 concerning the maturity of children and the responsibility of parents and teachers in that regard. Surely, children could only benefit from being allowed to speak freely from a very young age, and parents could encourage them to do so, thereby speeding up the process of arriving at maturity.

47. Mr. LUCE (United Kingdom) said he agreed with the Chairperson that part of the responsibility of parents, teachers and other adults dealing with children was to foster the process of their maturity. He was in no doubt that the vast majority of them were well aware of that duty and did their utmost to discharge it.

48. The exchange of views with the members of the Committee on the issues listed under "General principles" had proved very enlightening. None the less, he was satisfied that the current arrangements made by the United Kingdom in those areas were fully consistent with the provisions of the Convention. They reflected the best judgement of the Government on those matters and were also geared to the specific processes of public administration and domestic legislation; perhaps the problem lay in certain methods that required further clarification. There was an important distinction to be drawn between the Children Act 1989 - and similar legislation to be implemented shortly in Scotland and Northern Ireland - and legislation in other spheres. One of the basic aims of the Children Act was to protect the best interests of children in situations of conflict or dispute within their family or between adults seeking custody of them. In such circumstances it was felt that the law should state unequivocally that the best interests of the child were paramount. Such disputes did not arise so often in other areas, including education and health, and hence the absence of legislation with explicit references to the best interests of children.

49. He would stress that the whole purpose of the education system in the United Kingdom was to promote the development and interests of children, in line with the provisions of the Convention. Furthermore, the professional orientation and ethic of staff employed in the health services was to place the interests of the person in care first. Lastly, although some of the issues raised during the discussion would undoubtedly be given further thought

by the Government when shaping future policies, clearly there were also a number of differences which seemed to bear out the United Kingdom's current position.

50. Miss MASON asked for clarification regarding the exact status of the "guidance" to which many references were made in the report (CRC/C/11/Add.1). In some instances it seemed to have the force of law, whereas elsewhere it seemed purely discretionary. Where the status was clear, she wondered whether there was any recourse available, apart from recourse to a court of law, especially where no legislation existed. Furthermore, if there were indeed difficulties in incorporating the principles of the Convention in domestic law, had the possibility of issuing guidance on the subject been considered?

51. Mr. LUCE (United Kingdom) confirmed that there was a distinction between legislation and guidance, which none the less varied slightly in different areas. Generally, legislation set out powers or duties in an absolute way, although there might be areas of discretion in the use of those powers: the distinction between "must" and "may". Guidance, on the other hand, dealt with issues arising from legislation, and provided advice or made recommendations with regard to intent and practical implementation. The term "guidance" created the presumption that it should be followed unless there was justification for doing otherwise. In many cases, the individual had the right of complaint through available mechanisms, including some independent bodies, or recourse to a court of law. The Convention referred to "legislation and other measures". However, guidance in the United Kingdom was sometimes a subsidiary part of the legislative process and elsewhere a complement to or substitute for legislation. Notwithstanding possible variations in different sectors, guidance issued by the Government or by the Government in cooperation with non-governmental organizations had a definite status and officials who elected to depart from it would be obliged to justify such departures, especially where they appeared to disadvantage an individual or group of people.

52. The CHAIRPERSON invited the Committee to take up the section of the list of issues (CRC/C.8/WP.1) entitled "Civil rights and freedoms", which read:

"Civil rights and freedoms

(Arts. 7, 8, 13-17 and 37 (a) of the Convention)

18. In relation to articles 13 to 17 of the Convention on the Rights of the Child what steps have been taken to ensure that these fundamental rights and freedoms are provided for and effectively enjoyed by children in the United Kingdom?"

53. Mrs. SANTOS PAIS said she would welcome further information on legislation, guidance or other measures in the United Kingdom to ensure respect for the civil rights and freedoms of children in their daily life. She also sought clarification regarding the comment contained in the written replies to the effect that parents had a freely exercisable right to withdraw their children from classes on religious and sex education. It

seemed that, yet again, greater emphasis was placed on parental rights and responsibilities, to the detriment of the views and best interests of the child. Greater balance must be achieved.

54. Miss MASON, referring to paragraphs 188 and 189 of the report (CRC/C/11/Add.1), asked for details about the difference in the situation regarding sex education between England and Wales on the one hand and Scotland on the other hand.

55. Mr. PHIPPS (United Kingdom) said that, clearly, some background information was required on the difference between the constituent parts of the United Kingdom. In education, in particular, the different parts of the United Kingdom had long-standing traditions which had resulted in different types of institutions and curriculum patterns. Those traditions were bolstered by legislation dating back more than 100 years. Any legislation on education must therefore be viewed in those terms.

56. He confirmed that legislation governing religious and sex education in schools in England and Wales allowed parents to withdraw their children from classes on those subjects. That was in keeping with cultural and legal traditions in the United Kingdom which encouraged the rights and responsibilities of parents in choosing the education and schools of their children. However, it did not preclude the possibility of involving children in such decisions. Moreover, guidance issued on the subject mentioned the desirability of parents taking account of their children's wishes, although the final decision lay with them.

57. Mr. CAMPBELL (United Kingdom) pointed out that, although the education system in the United Kingdom was in harmony, it was not necessarily in unison. Furthermore, the fact that there was no statutory right for parents to withdraw their children from sex education in Scotland did not mean that the matter could not be negotiated. Further details on the issue could be provided in due course, if necessary.

The meeting was suspended at 5.05 p.m. and resumed at 5.30 p.m.

58. Mr. LUCE (United Kingdom), reverting to the question of the different pace at which change proceeded in the different parts of the United Kingdom, said that the core document (HRI/CORE/1/Add.5/Rev.1) submitted by his delegation, dealing with the basic structures of government and public administration, made it clear that, while the United Kingdom was a unitary State, it exhibited strongly devolved elements of government with regard to policy, as well as distinct traditions. He hoped that the Committee would accept that there was a lack of uniformity in that regard, and that in certain respects the United Kingdom needed to proceed in accordance with its constitutional traditions.

59. As to the controversial issue of corporal punishment, over the past 20 to 30 years there had been a very significant change of attitude within the public-sector institutions. Corporal punishment was now forbidden in State schools and in State-registered residential care; and although it was permitted under domestic law and the pertinent international conventions in certain areas of the private sector of education, such punishment was

restricted by law to a reasonable and human level. Mechanisms also existed to regulate and inspect all the institutions concerned, including the private sector of education.

60. The CHAIRPERSON invited the Committee to take up the section of the list of issues (CRC/C.8/WP.1) entitled "Family environment and alternative care", which read:

"Family environment and alternative care

(Arts. 5, 18, paras. 1 and 2, 9, 10, 27, paras. 4 20, 21, 11, 19, 39 and 25 of the Convention)

19. Will the Government consider introducing a more detailed definition of parental responsibility to include in particular the best interests of the child and the right of the child to express his or her views and have them taken into account, in order to ensure that the rights contained in the Convention are fully implemented for children within the family context?

20. With reference to paragraph 228 of the report it is indicated that in Northern Ireland the common law provides that a father is recognized as the natural guardian of his children and that the Guardianship of Infants Act 1886 conferred limited rights on a mother to apply to the courts for custody and access. Is the Government considering amending this legislation in order to ensure its conformity with the provisions of article 18 of the Convention relating to equal parental responsibilities?

21. What plans are there to improve the visiting arrangements for children whose parents are in prison?

22. What concrete action is the Government taking to ensure that article 19 of the Convention is fully implemented, including in the home and in private schools?

23. What further measures are planned in order to prevent sexual abuse? Have studies been undertaken concerning the causes of such abuse and have programmes been developed to help abusers and to rehabilitate children who have been the victims of such abuse?"

61. Mrs. EUFEMIO, noting that "reasonable" chastisement was permitted within the family environment, asked what criterion was applied in order to determine whether the degree of chastisement was reasonable, and what measures were taken by the Government to monitor the right of children, provided for under article 37 of the Convention, not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

62. Mr. LUCE (United Kingdom) said that the issue of punishment within the family environment raised the question of the extent to which it was sensible to use legislation as a means of regulating private relations within the family. There was a divergence of views on that question in the United Kingdom. The Government's position was that, having regard to its obligations under the Convention and other international instruments, a need

for such legislation had not been demonstrated. Accordingly, within the framework of article 5 of the Convention and within the limits of the criminal law on violence, cruelty and torture, punishment within the family was not criminalized in United Kingdom law.

63. Mr. HAMMARBERG said that article 19 of the Convention, and also article 28, which covered punishment in schools, were the Committee's main points of reference in its discussions with Governments regarding corporal punishment. The Committee regarded the provisions of those articles as fairly strict - stricter, perhaps, than the provisions of United Kingdom legislation. It was the Committee's experience that difficulties arose whenever a "reasonable" level of corporal punishment was permitted under a State's internal law. To draw an analogy, no one would argue that a "reasonable" level of wife-beating should be permitted. His conclusion was that the United Kingdom position represented a vestige of the outdated view that children were in a sense their parents' chattels. In the Scandinavian countries and Austria, stricter legislation had resulted in fewer cases going to court than in the United Kingdom, rather than the reverse. Furthermore, he noted from recent press reports that some judges tended to interpret the legislation fairly liberally: one, for example, had ruled that 15 lashes administered with a leather belt did not constitute excessive punishment. The notion of a permissible level of corporal punishment was thus best avoided.

64. As to the question of corporal punishment in schools, he had not grasped the justification for the different treatment meted out to pupils in privately and publicly funded schools. That state of affairs seemed to contradict the laudable principle, mentioned in the delegation's opening statement, that there was no place for corporal punishment in the United Kingdom's system.

65. Lastly, during a recent visit to Belfast he had heard of cases of children experiencing difficulties in communicating with their fathers held in prison in England. Requests that Irish prisoners serving sentences in Great Britain should be moved to Northern Ireland were sometimes, but not always, granted. It had further been alleged that telephone conversations in Irish between children and their fathers had been cut off by the prison authorities, the implication being that such action had been punitive in intent. What was the Government's policy in that regard, and what was being done to facilitate access for children to their fathers in prison?

66. Mrs. EUFEMIO asked whether the delegation was in a position to provide information on the National Society for the Prevention of Cruelty to Children (NSPCC). Was that organization recognized by, or in receipt of support from, the Government?

67. Mr. LUCE (United Kingdom) said that the NSPCC was a voluntary, non-governmental organization of long standing which could boast an extremely distinguished record of progressive work in the field of child protection. Although he was not qualified to speak on behalf of the NSPCC, it was his understanding that the organization was funded largely by public donation and that it also received some support from the Department of Health of the United Kingdom Government. Its competence to act for the protection of children was recognized in statute. It had recently initiated an inquiry into

child protection, and was expected to report shortly on the findings. The Government would be taking great interest in the conclusions and recommendations contained in that report.

68. Mr. HARRINGTON (United Kingdom), responding to the question about communication between Northern Irish children and the fathers who were in prison, said that, to judge from the details provided by Mr. Hammarberg, the fathers in question were presumably imprisoned in England, and very probably assigned to a high-security category for which restrictions might be applied to telephone conversations in a language the prison staff were unable to monitor. In recent years there had been significant improvements in visiting facilities, with financial support provided partly by private and voluntary organizations, designed to make visits by children to parents in prison less threatening and more informal. Visits entitlements had been doubled, two visits per month now being permitted, and financial assistance to facilitate visits was available under the Assisted Prisons Visits Scheme. He was unable to say to what extent those arrangements covered the fairly unusual situations in which parents of Northern Irish children were held in prisons in Great Britain. He would make further inquiries into the matter, and submit any relevant additional information to the Committee in writing.

69. Mr. PHIPPS (United Kingdom), said that corporal punishment had been abolished for pupils in State schools and publicly funded pupils in private schools pursuant to the United Kingdom's obligations under international treaties other than the Convention on the Rights of the Child. In the case of privately funded children in private schools, although corporal punishment was still permitted, there was a statutory requirement that, in accordance with article 28, paragraph 2, of the Convention on the Rights of the Child, such punishment should not be inhuman or degrading. In addition, the legislation contained explicit provisions in that regard.

70. Mr. LUCE (United Kingdom), seeking to clarify the legal framework with regard to punishment within the family, said that the criminal law offered protection against violence and assault within the family, as it did in other contexts, but "normal" punishment within the family was regarded as a private matter, involving decisions which pertained to the rights and responsibilities of parents implied in article 5 of the Convention. Of course, a court might sometimes have to adjudicate on the question whether parents had overstepped the mark. The United Kingdom was aware of the position adopted by the Scandinavian countries and Austria in that regard, as well as the position of many other countries whose provisions were akin to its own, some of which countries were also signatories to the Convention. The United Kingdom had taken legal advice on the question; the advice had consistently been that its position was in keeping with the Convention.

71. Mrs. SANTOS PAIS, reverting to the question of corporal punishment in schools, said it was surprising that different standards were applied in the public and private sectors of education, a state of affairs that cast doubt on the effectiveness of the protection of children's rights. The prohibition of corporal punishment in respect of publicly funded pupils complied with article 28, paragraph 2, of the Convention, whereas the limits placed on

corporal punishment in respect of privately funded pupils complied with the obligation under article 37, but not with that under article 28, paragraph 2.

72. Furthermore, with regard to corporal punishment within the family the United Kingdom delegation had stated that it was not appropriate to regulate what should be a private matter by means of legislation. It must be borne in mind, however, that article 19 of the Convention required all appropriate measures, including legislative measures, to be taken to protect the child against, inter alia, physical violence. A way should thus be found of striking the balance between the responsibilities of the parents and the rights and evolving capacities of the child that was implied in article 5 of the Convention. There was no place for corporal punishment within the margin of discretion accorded in article 5 to parents in the exercise of their responsibilities. Other countries had found it helpful to incorporate a provision to that effect in their civil law. As had already been pointed out, it was in any case well-nigh impossible to assess objectively what constituted moderate corporal punishment.

73. It was apparent from the response to issue No. 23 that the United Kingdom authorities were concerned to leave no stone unturned in gathering evidence for use in the prosecution of persons accused of sexually abusing children. Yet confrontations between an alleged abuser and the victim could be a painful experience for the child and an intrusion on his or her privacy. Did the United Kingdom delegation have any views on that sensitive question?

74. Mr. LUCE (United Kingdom) said that, given the limited time remaining, he would address only the question raised by Mrs. Santos País b regarding physical sanctions within the family. Although he could not produce any scientific evidence in support of his contention, he could confidently assert that corporal punishment was now practised vastly less frequently than had been the case two or three decades ago, and that the attitudes of both parents and children to the issue had changed enormously. It was hard to pinpoint the reasons for that change in attitudes, or to identify the sources of the messages and cultural influences that had brought it about. It seemed likely, however, that the very significant changes in the legislative framework governing public institutions, publicly managed schools and residential homes had both reflected and hastened the change. The report set out the United Kingdom's position with regard to the most sensible role to be played by legislation and by other influences on the behaviour of individuals in society. In his view, there was no evidence that a much more Draconian framework of legislation, whether criminal or civil, to govern internal family matters would necessarily bring about the desired changes or, indeed, be appropriate. The preference of the United Kingdom authorities was to avoid legislation in that area, and to allow individual attitudes to keep pace with the cultural changes in society. He hoped that the Committee would give careful thought to the significant change in attitudes that had taken place over the years, and to the risk that what might be interpreted - however wrongly - as unjustifiable intervention could adversely affect the evolution of those attitudes.

The meeting rose at 6.10 p.m.